

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
MCKOY, et al., : Docket #18cv9936
 : 1:18-cv-09936-LGS-SLC
 Plaintiffs, :
 - against - :
 THE TRUMP CORPORATION, et al., : New York, New York
 : May 18, 2022
 Defendants. :
 ----- :

PROCEEDINGS BEFORE
THE HONORABLE SARAH L. CAVE,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiffs: KAPLAN HECKER & FINK LLP
BY: ROBERTA KAPLAN, ESQ.
JOHN QUINN, ESQ.
350 Fifth Avenue, 63rd Floor
New York, New York 10118

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP
BY: ANDREW WILSON, ESQ.
600 Fifth Avenue, 10th Floor
New York, New York 10020

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

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APPEARANCES (CONTINUED):

For Defendants: ROBERT & ROBERT, PLLC
BY: CLIFFORD ROBERT, ESQ. (via telephone)
MICHAEL FARINA, ESQ.
150 Broad Hollow Road
Melville, New York 11747

LEWIS BRISBOIS BISGAARD & SMITH LLP
BY: PETER SHAPIRO, ESQ.
77 Water Street, Suite 2100
New York, New York 10005

For Nonparty - NELSON NIEHAUS LLC
ACN Opportunity, BY: STEPHANIE NIEHAUS, ESQ.
LLC: 200 Park Avenue, Suite 1700
New York, New York 10017

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None

E X H I B I T S

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THE CLERK: Your Honor, this is in the matter of McKoy, et al. versus The Trump Corporation, et al., 18cv9936. Counsel, please state your appearance for the record.

MS. ROBERTA KAPLAN: Your Honor, Roberta Kaplan from Kaplan Heck, I'm here with my partner, John Quinn.

HONORABLE SARAH L. CAVE (THE COURT): Okay, good afternoon, to both of you. Hi.

MR. ANDREW WILSON: Good afternoon, Andrew Wilson from the law firm of Emery, Celli Brinckerhoff Abady Ward & Maazel, also for the plaintiffs.

THE COURT: Okay, good afternoon. All right, and I understand we have someone on the phone?

MR. CLIFFORD ROBERT: Yes, good afternoon, Your Honor, Clifford Robert on behalf of the defendants.

THE COURT: Okay, good afternoon. All right, and who do we have in the courtroom?

MR. MICHAEL FARINA: Good afternoon, Your Honor, Michael Farina from Robert & Robert, also on behalf of the defendants.

THE COURT: Okay, good afternoon.

MR. PETER SHAPIRO: And, finally, Peter Shapiro from Lewis Brisbois Bisgaard & Smith, also for defendants.

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THE COURT: Okay, good afternoon, to all of you,
nice to meet you.

MS. STEPHANIE NIEHAUS: Your Honor, I apologize,
I don't know where you would like me to sit --

THE COURT: Okay.

MS. NIEHAUS: I'm Stephanie Niehaus from
Nelson Niehaus on behalf of nonparty ACN Opportunity,
you indicated your preference that we appear today, as
well, so --

THE COURT: Yes. Yes, do you want to take a
seat at the defendants' table, do you mind?

MS. NIEHAUS: I sure can.

THE COURT: Since I will be addressing you and
I don't want to have to shout.

MS. NIEHAUS: No problem.

THE COURT: All right, and if you're
comfortable, when you're speaking if you want to take
your mask off, that's fine with me.

All right, so we have a few issues to cover
today and I thought we would start with document
issues and leave the deposition, list of depositions
and the number of depositions to the end because some
of the document issues may, resolving that may help to
know what to do about depositions.

1
2 So let's start with the ACN documents, so I
3 guess it's good that you're here, Ms. Niehaus. So
4 let's start with the Eric Trump Foundation related
5 document, documents related to the promotion of ACN.
6 So I'm hoping we can just get into a little bit more
7 detail about the connection and what it is the
8 plaintiffs are looking to find by, I guess they're
9 looking for agreements, communications and other
10 documents relating to involvement of ETF and the
11 endorsement of ACN.

12 MR. JOHN QUINN: Yes, Your Honor, thank you,
13 John Quinn again from Kaplan Hecker on behalf of the
14 plaintiffs and the putative classes. So I think the
15 amended complaint, the second amended complaint makes
16 clear that the charitable donations piece has a couple
17 of facets to it. One, we alleged that ACN, itself,
18 hosted charitable golf tournaments at Trump affiliated
19 golf clubs and in so doing that significant amounts of
20 money were paid over in, you know, purported fees and
21 expense payments, things like that, food and beverage
22 fees, et cetera.

23 In addition to that, that channel, ACN,
24 itself, hosting tournaments at Trump clubs, we had
25 some reason to allege, and there's some allegation in

1
2 the second amended complaint that ACN and/or people
3 affiliated with ACN were also making very significant
4 donations to the Eric Trump Foundation, you know, as
5 part of a broad discussion, you know, pursuant to
6 discussions with the defendants, and that some of
7 those funds in turn were being paid back to Trump
8 affiliated clubs and entities including entities that
9 are, are identified in the second amended complaint.

10 The discovery we've been able to do so far
11 from nonparties, defendants have not produced these
12 materials, but from nonparties bears that out very
13 substantially. And I brought copies of some of these
14 documents and I'd be happy to share them with the Court and
15 I have copies for opposing counsel. You know, but in short
16 we have, among other things, a Form 990 from 2016, this was
17 part of a FOIL production from the New York Attorney
18 General's Office, a 990 from 2016 that says, among
19 other things --

20 THE COURT: For ETF?

21 MR. QUINN: Yes.

22 THE COURT: Okay.

23 MR. QUINN: That says, among other things, that
24 35 percent of that entity was owned by a family member of
25 the defendants. Let me just make sure I've got that

1 document in front of me, Your Honor.

2 THE COURT: Okay. And so that would show,
3 tend to show what about the plaintiffs' claims, does
4 that go to damages or does that go to the conspiracy
5 or?
6

7 MR. QUINN: I think the fundamental idea is
8 that it helps to illuminate the full ways in which ACN
9 was compensating the defendants for this relationship.
10 Right, the defendants were promoting ACN very directly in a
11 whole variety of channels --

12 THE COURT: Okay.

13 MR. QUINN: On ACN promotional videos, written
14 publications, blog posts, also in other publications,
15 *Success* magazine, for example, and then defendants had ACN
16 on "The Celebrity Apprentice." In addition to all of that,
17 defendants were appearing side by side with ACN executives
18 at charitable events hosted by ACN and charitable events
19 hosted by the defendants. And in connection with that a lot
20 of money was flowing back and forth.

21 THE COURT: Okay.

22 MR. QUINN: So the 990 basically says 35 percent,
23 you know, is owned by a family member of the president, the
24 very next year the Eric Trump Foundation fundamentally
25 reorganizes itself, renames itself Curetivity, we've pursued

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that entity through nonparty discovery and their counsel has essentially told us it's a brand new entity, they don't have anything from prior to 2017, only the defendants would have that information.

THE COURT: All right.

MR. QUINN: In those New York Attorney General documents we see, in addition to this 990, very significant payments from Eric Trump Foundation to Trump clubs. There's a check, a single check, for example, \$100,000 to one of the Trump entities for hosting fees, no further description.

THE COURT: Okay.

MR. QUINN: There's a significant check to the Eric Trump Wine Manufacturing Company. Really just check after check as well as expense sheets that show these very significant payments. So we're seeing funds flowing in significant volume from ACN to the Eric Trump Foundation, and then from the Eric Trump Foundation to Trump related LLCs that are benefiting the individual defendants. And while we allege the ACN payments, we didn't have reason at that point to allege ACN co-founders, but the same New York AG production also includes documents indicating \$100,000 donations from ACN's principal founder, Robert Stevanovski, for example.

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2 And then we do see a smattering in defendants'
3 production of email communications within the Trump
4 Organization in which a lot of enthusiasm is expressed
5 about, you know, about these donations and in which --

6 THE COURT: The donations from the ACN founders?

7 MR. QUINN: ACN, and one of the emails says ACN
8 and its partners, presumably referring to Mr. Stevanovski
9 who made the \$100,000 donation. And there's discussion in
10 some of those emails, too, about Eric Trump wanting to
11 reciprocate those payments from ACN, wanting to show his
12 partnership, questions about whether he'll appear at the ACN
13 events to reflect, you know, these significant donations
14 that are being made. So this is just a part of the broader
15 relationship in which ACN is providing, and its partners,
16 are providing significant amounts of money to the Trump
17 Organization and in various ways the Trump Organization and
18 its individual, and the individual defendants are
19 communicating to the public their endorsement and promotion
20 of ACN, their efforts to legitimize it and present it as a
21 charitable and good company, and to stand alongside it. And
22 then that close relationship, itself, is something that
23 former President Trump repeats throughout his endorsements
24 of ACN, that he's close with these founders, that they
25 played golf together, that he knows them to be good guys and

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2 that that is one of the reasons people should listen to his
3 endorsement and invest in the ACN business opportunity.

4 THE COURT: Okay. So you have a lot it sounds like
5 already on this issue, so I'm trying to figure out what, so
6 you're looking for formal agreements between the Trump,
7 between the Eric Trump Foundation and ACN, for example, you
8 don't otherwise have that in any discovery that you've
9 gotten from a party in the case?

10 MR. QUINN: With respect to agreements it's
11 correct that we don't. I don't know, of course, whether
12 those exist or whether these are simply communicated about
13 by email and people then make donations. I'd say the primary
14 thing we're looking for here really is completeness. You
15 know, we know ACN and that Robert Stevanovski were making
16 very significant payments to Eric Trump Foundation, we know
17 that the Eric Trump Foundation for the same golf tournaments
18 that were being sponsored was paying money back to Trump
19 clubs. But while we found glimmers of that from the New
20 York AG FOIL productions, we don't have it in any
21 comprehensive and complete way.

22 THE COURT: Okay, what about something from the
23 Eric Trump Foundation though that just showed donations made
24 by ACN or any of its founders, do you have, is that
25 something you've already gotten or that you can get from a

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2 party in the case?

3 MR. QUINN: That I think would have to come from
4 the defendants.

5 THE COURT: Okay.

6 MR. QUINN: So the Eric Trump Foundation kind of
7 recreated itself as an entity called Curetivity in 2017, we
8 pursued them, they've given us some documents from post
9 2017, but that really misses the key period --

10 THE COURT: Okay.

11 MR. QUINN: Which was leading up to 2016, and
12 their understanding as communicated to us is that those
13 documents would be with defendants.

14 THE COURT: Okay.

15 MR. QUINN: So I think the kind of chart that Your
16 Honor is describing, just information sufficient to
17 show really all donations and payments from ACN and
18 then maybe in connection with those same tournaments
19 information sufficient to show payments of expenses of
20 any other fees to Trump associated or Trump affiliated
21 private entities and LLCs. I think that and, you know,
22 related communications, and we can work on any
23 targeted search terms for that, that's really the sum
24 total of what we're looking for.

25 THE COURT: Sorry, the second category I'm

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2 just not as clear about, payments of expenses or fees
3 from the Eric Trump Foundation back to any Trump
4 related entity? That seems very broad and, you know,
5 money is fungible, so just because money went, came
6 from ACN into the Eric Trump Foundation and went back
7 out, you know, we can't mark those bills necessarily.
8 So how do we narrow that so that we're focused on, you
9 know, contemporaneous, you know, if \$100,000 comes in
10 on Monday and then goes back out on Tuesday, then
11 there's an inference, but if it's months later, weeks
12 later, it's not as obvious.

13 MR. QUINN: Yeah, I think some sort of time
14 limitation like that sounds appropriate. Also, most
15 if not all of these donations, at least the ones I'm
16 aware of, were in connection with particular events or
17 tournaments, ACN was sponsoring a hole or giving money
18 to a charitable event. So maybe just information
19 sufficient to show expense payments relating to those
20 events.

21 THE COURT: Do we have a list of those
22 specific events or is that something you could
23 generate?

24 MR. QUINN: Only from the list of donations we
25 know about some of them.

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2 THE COURT: Okay. But there couldn't have
3 been that many golf tournaments, maybe there were, I
4 don't know, are we talking dozens or a handful or
5 hundreds?

6 MR. QUINN: I think for the ones that ACN,
7 itself, was hosting at Trump clubs, I believe we
8 included a list in the second amended complaint that
9 we found from social media or other public sources.
10 That's a pretty discrete list, I think it was one a
11 year for some number of years.

12 THE COURT: Okay.

13 MR. QUINN: As for Eric Trump Foundation
14 events that ACN or its founders sponsored or
15 contributed to, we just don't know without seeing
16 those sponsors, but I don't have any reason to think
17 that it's more than a dozen events.

18 THE COURT: Okay, thank you. All right, do
19 the defendants want to speak to this issue first or should
20 I just go to Ms. Niehaus to address this?

21 MR. ROBERT: I'll address this, Your Honor, this
22 is Clifford Robert on behalf of the defendants.

23 THE COURT: Okay, Mr. Robert.

24 MR. ROBERT: The point of the complaint, the
25 amended complaint which is 498 paragraphs, uses a broad

stroke and makes a series of claims against the defendants. And previously the Court properly dismissed plaintiffs' RICO claims and the only remaining State Court claims are very narrow in nature. The type of information that the plaintiffs are trying to obtain from the Eric Trump Foundation would not lead to anything relevant with regard to the narrow scope of claims that are left in this case. They've already received emails from Eric Trump as well as from Mr. Trump's assistant, Lynn Patton (phonetic), which discuss the issues that I think it was, counsel just spoke about. They're going to be taking a deposition of Eric Trump, we've already agreed to produce Lynn Patton for a deposition, they can ask questions at that point as to what, if any, monies ACN gave in terms of contributions to the Foundation and did they sponsor a foursome at a golf outing or a hospitality tent. But to make the Eric Trump Foundation to have to go through providing information beyond that which is provided by the defendants in this case, and beyond that which they would be able to explain at a deposition, I think will not lead to anything relevant and will basically reinstate the RICO type claims that have previously been dismissed.

THE COURT: Okay, thank you, Mr. Robert. Ms.

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Niehaus.

MS. NIEHAUS: Yes, hi, good afternoon, Your Honor. I don't actually understand --

THE COURT: Yes, just put the mic over by her, please. Thanks.

MS. NIEHAUS: Good afternoon.

THE COURT: Better.

MS. NIEHAUS: I don't actually understand this particular dispute to involve ACN at this point, it was not a dispute that was identified in the discovery letter that the plaintiffs submitted with respect to ACN.

THE COURT: Okay.

MS. NIEHAUS: It does, I believe, touch on some issues about the involvement of the founders that we can discuss when we get to the founders' deposition question, but I don't believe at this point plaintiffs have sought any discovery directly from ACN about the Eric Trump Foundation.

THE COURT: All right, thank you.

MR. QUINN: Yeah, Your Honor, for plaintiffs I would just --

THE COURT: All right, I'm sorry, you were talking about ACN so I'm still new to this case so I'm

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2 trying to keep everybody straight.

3 MR. QUINN: If I might also, Your Honor, just
4 clarify one point.

5 THE COURT: Yes.

6 MR. QUINN: The Form 990 that I referred to is
7 a Form 990 for the Eric Trump Foundation.

8 THE COURT: Right.

9 MR. QUINN: The mention of 35 percent
10 ownership by a member of the president's family is in
11 connection with the entities to which the Eric Trump
12 Foundation was making significant payments.

13 THE COURT: Okay.

14 MR. QUINN: So in that sense I think it's
15 corroborated.

16 THE COURT: Okay. All right, well, Mr.
17 Robert, if we were to just ask the Eric Trump
18 Foundation to search and provide, say, a spreadsheet
19 or a list of donations by ACN or the ACN founders, is
20 there still an objection to having to do that, that
21 doesn't seem very burdensome?

22 MR. ROBERT: It still would, Your Honor, only
23 because I think it enters into a slippery slope of
24 letting this case get beyond that which it is. If
25 they'd like to ask Mr. Trump these questions at his

18

1 deposition, they're more than able to do that. If
2 they're not satisfied with the answers that he gives,
3 they can make further application to the Court. But,
4 again, we're now going to an institution that's not a
5 party to this case, not my client in this case, and
6 asking them to have to produce information.
7

8 THE COURT: Well, right, but if the allegation
9 -- well, let me let you put it in your own words, Mr.
10 Quinn, which claim would you say this information goes
11 to, the claim that's still in the case?

12 MR. QUINN: Certainly as to all the fraud
13 claims and I think as well to the negligent misrep
14 claims. We're talking about the various, really two
15 distinct elements, one, these charitable tournaments
16 and these joint appearances and these public
17 communications of support of one another's charitable
18 nature is a part of the broader promotional
19 endorsement efforts. And, you know, maybe even more
20 directly, this flow of funds from ACN and its founders
21 back to the individual defendants, including the Trump
22 Corporation, is a part of the compensation, it's what
23 the, it's what motivated the fraud in question, we
24 allege the fraud was undertaken for the purpose of
25 receiving remuneration from ACN and this was one form

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of that remuneration.

THE COURT: Go ahead, Mr. Robert.

MR. ROBERT: Your Honor, if I may?

THE COURT: Yep, go ahead.

MR. ROBERT: There's a causative link that's missing here, we're now talking about charitable contributions that ACN and its founders made to the Eric Trump Foundation. They had a commonality in the interests of the charitable causes that they like, I believe it was St. Jude's Hospital that was one of the largest recipients of funds from the Eric Trump Foundation and that ACN's principals and Mr. Trump both had a soft spot for St. Jude's hospital. So the fact that they made contributions to the Eric Trump Foundation and then what, if anything, the Eric Trump Foundation did with those funds in terms of its expenses would be irrelevant.

If Your Honor is suggesting just simply the issue of what payments were made to the Eric Trump Foundation from the principals of ACN and ACN, that's certainly something I could discuss with the client.

THE COURT: Yes, I think that would be helpful because what I worry about is Mr. Trump sitting in his deposition and saying there may have been donations by

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2 ACN but I don't remember the details, and then we're
3 kind of right back where we started. And, you know,
4 we're right back in the same place. And so it's much
5 easier to envision Ms. Kaplan and Mr. Quinn being able
6 to show as an exhibit to Mr. Trump here's a list of
7 the donations from ACN and then ask him, you know,
8 further detailed questions about particular donations
9 or particular events. So, and since Mr. Quinn was
10 carefully using the word sufficient, the phrase
11 sufficient to show, it seems to me that a list of the
12 donations really would be all that would be called for
13 and specifically the time period before 2017 is what
14 you're saying, Mr. Quinn. So starting when, going from
15 when to when, Mr. Quinn?

16 MR. QUINN: So the relationship here began in
17 2005, but understandably I believe some of those
18 earlier years there are limited records. So I think
19 for that relevant period, to the extent records exist,
20 and we understand that in some of those earlier years
21 they don't.

22 THE COURT: When, do we know when the Eric
23 Trump Foundation was created?

24 MR. QUINN: I know it sort of dissolved and
25 rebranded in 2016.

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THE COURT: Right.

MR. QUINN: I actually don't have that in front of me.

THE COURT: Okay.

MR. QUINN: But certainly if that was at any point during the relevant period we'd agree and understand that it would start then.

THE COURT: Mr. Robert, do you know when the Eric Trump Foundation was created?

MR. ROBERT: I don't, Your Honor, and I just want to understand, what is the window we're talking about here, I know the end date --

THE COURT: That's what we were trying to figure out.

MR. ROBERT: Okay.

THE COURT: Let's just say hypothetically that the Eric Trump Foundation was created in 2011, obviously then the time period that we would be asking you to look in the Foundation's records for donations from ACN or its founders would just be from 2011 through 2017.

MR. ROBERT: We'll have to take that back to the client, Your Honor.

THE COURT: Yes, okay, hold on one second.

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2 MR. SHAPIRO: If I could just add a note, I
3 just took a look at the complaint, in paragraph 179
4 it's alleged that at least since 2013 the Eric Trump
5 Foundation has hosted the charity golf tournaments.

6 THE COURT: Okay, thank you, Mr. Shapiro. So
7 it sounds like approximately, Mr. Robert, we're
8 talking about the period 2013 plus or minus a little
9 bit through the end of 2017. So the question to pose
10 to your client would be searching its records and
11 producing a list or a spreadsheet of donations that
12 the Eric Trump Foundation received from ACN or one of
13 its founders/partners, whatever it is they're called,
14 could you undertake to do that?

15 MR. ROBERT: Absolutely, Your Honor.

16 THE COURT: Okay, great.

17 MR. QUINN: Your Honor, if I might just
18 clarify one point on the 2013?

19 THE COURT: Sure.

20 MR. QUINN: So, again, ACN, itself, was
21 hosting its own tournaments at Trump clubs and then
22 was also donating to the Eric Trump Foundation which
23 was also hosting events. The complaint alleged that
24 the first ACN hosted tournament was in 2013, there may
25 well have been donations to Eric Trump events prior to

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that.

THE COURT: Okay.

MR. QUINN: So I just, to the extent they exist or that the organization did I'd ask that we just check back earlier.

THE COURT: Okay. So if it's possible to find out if they went earlier than 2013, but I guess I'm also not hearing that we necessarily need an exhaustive list of every donation but rather we're trying to get a sense of the spectrum and how much, how many donations there were roughly because it goes to the endorsement efforts that are involved.

So if you could investigate that for us, Mr. Robert, using approximately 2013, or maybe a little bit before that, depending on when ACN and the Eric Trump Foundation became involved with each other.

MR. ROBERT: Yes, Your Honor.

MR. QUINN: Your Honor, briefly on the date issue, I mean I'm looking at a communication January, 2014, in which a Trump Organization employee is saying to Eric Trump in email, ACN and their partners are great to us at the club. So as early as January, 2014, there's this recognition of sort of special status and of money flowing in from these people.

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THE COURT: Okay. All right, I think that covers that one. All right, let's talk about compensation. So I'm struggling with, the individual defendants' compensation is what we're talking about and I'm struggling with understanding why if one of the Trump entities paid one of the Trump children who are defendants in this case, \$10 million a year, so what, what does that tells us about the fraud?

MR. QUINN: Yeah, well I think two distinct points here, too, Your Honor, one is I do think it matters whether they were paid \$100,000 or a \$1 million, or \$10 million, I'd reference the *Quattrone* case from the Second Circuit, which I think we have in our letter but just in case, that's 441 F.3d 153, 187, where the Circuit is upholding the admission in a criminal case, but upholding the admission of evidence about salary in order to show specifically that that salary established a motive or the misconduct in question. A salary of \$100,000 might motivate somebody to push some boundaries, a salary of \$10 million might motivate somebody to push other boundaries, or to push those boundaries further.

THE COURT: Well, right, but if we're -- compensation from which entity though, if it's the

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2 Trump Corporation I can imagine just from what we all
3 sort of know that's in the public sphere, the Trump
4 children do a lot of different things for the Trump
5 Corporation, none of which have anything to do with
6 ACN or the issues in this case.

7 MR. QUINN: Right, and that's why we've just
8 asked again on an annual basis information sufficient
9 to show, just on that point total number per year is
10 more than sufficient, we can all argue whatever
11 inferences should be drawn from that. The more
12 specific point about discreet entities is, you know,
13 this was a complex organization, we're doing our best
14 to kind of unspool it from the documents we've gotten
15 and from the public records. But it does seem like to
16 the extent there are Form 990s and other documents we
17 can put our hands on, multiple individual defendants
18 are holding different officer and director positions
19 at lots of different LLCs that benefit significantly
20 when, for example, somebody pays \$2 million to go on
21 "Celebrity Apprentice," a big chunk of that money goes
22 to a specific production LLC. We just want to take
23 basic discovery, how much of that money then in turn
24 flowed back to the individual defendants who then
25 showed up on those episodes and said wonderful

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2 praising things about ACN's video phone.

3 THE COURT: Right, so you get me there, what
4 I'm getting less is the big picture and how that is,
5 would ever be admissible or help one way or the other?
6 In other words, it's going to be so broad as to really
7 not be that helpful, whereas I see your point. If
8 there is something that, an ACN related event and
9 there's a payment that goes straight through, but what
10 I understood Mr., the defendants' letter to be saying
11 is that there was no such stream of payments directly
12 related to ACN. And so that's, the information that
13 would be most helpful to you doesn't exist, so that's
14 why they were proposing a request for admission, so
15 why isn't a request for admission on this point going
16 to resolve the issue?

17 MR. QUINN: So I think the request for
18 admission they proposed is essentially that there was
19 no sort of performance based compensation, right, you
20 did a great job with ACN, here's a bonus. We're just
21 trying to understand the basic architecture, if \$2
22 million from ACN is paid into Trump Productions LLC
23 for the benefit of appearing on "The Celebrity
24 Apprentice," how much of that money is benefitting,
25 for example, Ivanka Trump who then appears on that

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episode?

THE COURT: Right.

MR. QUINN: So it may be that there's no performance bonus, but just by virtue of their officer and director positions, they're benefitting, they're getting some percentage of every dollar that's going into LLCs, we're trying to just at a very basic level map and understand that.

THE COURT: Okay.

MR. QUINN: If their general total compensation sort of stretches the bounds of where inferences might be drawn, we understand that, I think the more important priority from our perspective is if we can trace funds into a Trump LLC, whether by way of the Eric Trump Foundation or the production company, understanding how, if at all, does that payment to LLC in turn actually benefit the individual defendants here, that's the link in the chain that we're missing and we're trying to get some discovery.

THE COURT: Well, so can we get at this a different way through asking the defendants, I mean you are going to depose the defendants, themselves, and you can ask them do they know whether they received any compensation related to ACN and, if so, when and in what amount and then

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2 we can back our way into that. But I'm just struggling
3 with, if we were to wade into the general ledger and all the
4 accounting records that's one thing, and I'm not suggesting
5 that we do that, but I'm struggling with how we get at the
6 narrower question that you're talking about? Mr. --

7 MR. QUINN: If I may?

8 THE COURT: Yes, go ahead.

9 MR. QUINN: One additional suggestion that
10 occurred to me actually this morning.

11 THE COURT: Yes.

12 MR. QUINN: So the defendants in their letter do
13 concede yes, payments to LLCs benefit the officers and
14 directors of those LLCs.

15 THE COURT: Of course.

16 MR. QUINN: We're trying to put some kind of
17 number on that, understanding that we don't want to get into
18 the general ledger. One thought, we tried to get our hands
19 publicly on the LLC agreements that govern these entities
20 and show who the officers and directors are, some production
21 of just the basic kind of LLC governance information, what's
22 the governing agreement and who are the officers and
23 directors.

24 THE COURT: Which entities are we talking about?

25 MR. QUINN: We've got a defined term for the

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entities and I can kind of go through them --

THE COURT: Yes.

MR. QUINN: But it's essentially a series of controlled entities --

THE COURT: Okay.

MR. QUINN: The Trump Corporation, itself, Trump Organization, Inc., and then certain LLCs that were involved in either the production of the TV show or that ran, at least as far as we believe, it ran and owned the golf clubs at which these events were being held and where all the fees were being paid. I think generally speaking they fall into those buckets but we have a defined term in some of the discovery requests.

THE COURT: Right. Mr. Roberts, do you want to speak to this, as well?

MR. ROBERT: I do, Your Honor. This is going so far afield in terms of the claims that are left in the case and it goes back to a phrase I used a little bit earlier which was the link in the causation here. Payments that ACN made to the defendants in the case, okay, we said send a request for admissions, we'll answer those questions in a deposition. But to suggest that now the plaintiffs are entitled to information of the compensation of these defendants from their corporate

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2 entities, there is no way that can lead to anything that
3 would be relevant in this case, it would be incredibly
4 intrusive and, in addition, they are now seeking information
5 from eleven nonparties in addition to the Trump Corporation
6 which is named. So are they entitled to what, if any, monies
7 flowed from ACN to the Trump Corporation, to President Trump
8 and to the others, yes, we've already said we'll provide
9 that information, they can ask it at the depositions.
10 Anything more than that will lead nowhere, it's just for
11 their lawyeristic need to want to know this information.

12 MS. KAPLAN: If I may, Your Honor?

13 THE COURT: Sure.

14 MS. KAPLAN: So I would respectfully request,
15 this is Roberta Kaplan from Kaplan Hecker, that the
16 Trump children did not appear on "Celebrity
17 Apprentice" to promote ACN for free. It wasn't an act
18 of charity for them, they were being compensated for
19 that just like their father was. And so we are
20 entitled to see the degree of compensation they got at
21 a minimum for Trump Productions which is the entity
22 that received the monies from ACN in order to appear,
23 they didn't get to, they weren't chosen to be on the
24 show out of merit, they were chosen to be on the show
25 because they paid Mr. Trump to be on the show, and we

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2 are entitled to know the other people on those shows
3 who said great things about what a great business
4 opportunity ACN is, we want to know how they were paid, as
5 well.

6 So if we limit it to that and we get the
7 governing documents about the Trump Production LLC to see
8 what the kids got out of that, that would be a way of
9 getting at this issue. But just to say, yeah, we were
10 paid, but we can't tell you how much, is not an answer.

11 THE COURT: Right. Okay, thank you. What if we
12 were to narrow it to that, Mr. Robert, and so if we focus
13 on Trump Productions LLC and does the LLC agreement for
14 that entity and any payments that went from ACN to Trump
15 Productions LLC to one of the Trump children?

16 MR. ROBERT: I still think, Your Honor, that
17 goes well beyond the scope of what would be
18 appropriate here because at the end of the day they
19 could ask questions as to how much the Trump children
20 were paid be on "Celebrity Apprentice." I'm sure
21 they'll ask President Trump the same question and
22 they'll answers to that, but to then have the internal
23 governing documents of various Trump organizations or
24 Trump companies which are not named defendants in this
25 case, again, I don't see how that's relevant to the claims

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Ms. Kaplan wants to make the argument that she wants to know how much money was paid, well if we're going to give her a response to a request for admissions, that's going to be a statement under oath and the depositions are going to be under oath. I think anything more than that is overly intrusive, certainly at this point before the defendants have been deposed.

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THE COURT: Well but we're just, hopefully you can hear me, I'm just talking about one LLC, just the Trump Production entity. And so, again, my fear is that, yes, it's great that we have the depositions but my fear is that the answer to the question is going to be I'm sure I did but there's an agreement that says how much I got or there's an email that says how much I got related to, you know, this particular show of "Celebrity Apprentice" that I appeared on and then again we're right back in the same place. So would you be willing to discuss with your client information about the Trump Productions LLC entity that could be searched with respect to ACN related payments that flowed through Trump Productions to one of the Trump children?

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MR. ROBERT: Well, of course, Your Honor, anything you instruct me to speak with my client of

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course I will. The issue comes when we talk about flow through. I can certainly discuss with my client the issue of what they were paid from Trump Productions LLC if we talk about what the time period in question is --

THE COURT: Right.

MR. ROBERT: And we'll figure out if that suffices the issue. But it's this flow through thing which is where I'm having a bit of disconnect.

THE COURT: I understand and you're correct to critique me for being vague on that.

MR. ROBERT: I didn't mean to do that, Your Honor.

THE COURT: It's all right. So we obviously know what episodes of "Celebrity Apprentice" the Trump children appeared on, right, so could the plaintiffs provide to Mr. Robert a list of those episodes that we're interested in and then we could just narrow the time period to, you know, a week or two after that or, I don't know, we'll have to find out what the payment cycle was. But if Ivanka Trump appeared on a "Celebrity Apprentice" episode on May 1st, would there be a payment within the following 30 days or something that would come from the Trump Productions entity, am

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2 I characterizing that correctly?

3 MR. QUINN: I think so, Your Honor. I mean
4 just to clarify with a little more detail around the
5 Productions LLC in particular, the records we've been
6 able to kind of put our hands on suggest, at least
7 with respect to ownership, that the Trump Productions
8 LLC essentially ran up entirely to Donald J. Trump, it
9 was the first level 99 percent owned by him
10 personally, then there's a managing member which, in
11 turn, is owned 99 percent by a trust of which he's the
12 sole beneficiary. So ownership wise that entity seems
13 to roll up almost exclusively to former President
14 Trump.

15 THE COURT: Okay.

16 MR. QUINN: So I do think the question if
17 we're narrowing to that entity is essentially how were
18 they compensated for their participation in the TV
19 show.

20 THE COURT: Okay.

21 MR. QUINN: And if that's just an annual
22 salary I think on that point we'd be entitled to know
23 what that salary was --

24 THE COURT: Okay.

25 MR. QUINN: So we can just kind of divvy that

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up among the episodes.

THE COURT: Okay.

MR. QUINN: So I think that's what the focused question I think would be for Productions.

THE COURT: Okay.

MR. SHAPIRO: Can I speak to that briefly?

THE COURT: Yes, let me just Mr. Robert if he's following. So what we're trying to get at, Mr. Robert, is if one of the Trump children appeared on a "Celebrity Apprentice" episode and the plaintiffs will give you a list of the episodes that they're interested in, was there compensation that then went to the child, and I'm sorry to use the phrase child, but offspring of that appeared on the episode from the Trump Productions LLC entity, and would that have been paid, you know, seriatim per episode or was it an annual compensation or something else?

MR. ROBERT: I understand what you're asking, Your Honor, and I'll speak to my client about it, I got it.

THE COURT: Okay, thank you. Mr. Shapiro.

MR. SHAPIRO: The point I would just make --

THE COURT: Just put the mic closer to your mouth and you can take your mask down.

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2 MR. SHAPIRO: The point I'd just make for
3 clarification is it's my understanding that the
4 offspring were on all or most of the episodes over
5 many seasons. We're really I think just talking about
6 two episodes here that featured ACN, and why we would
7 need to delve into how they were paid for, you know,
8 tens, if not hundreds of other episodes of television
9 shows is beyond me. I think we should just be looking
10 at the episodes that involved ACN.

11 THE COURT: That's why Mr. Quinn was agreeing
12 to provide us just with the episodes that are relevant
13 in this case.

14 MR. SHAPIRO: Right.

15 MS. KAPLAN: And we can, believe it or not, I
16 became a lawyer, Your Honor, because I'm not very good
17 at math. But if there are 12 episodes a year and
18 they're paid X for an annual salary, even I can do
19 that division.

20 THE COURT: Okay.

21 MS. KAPLAN: We're not going to argue that it
22 was for shows beyond.

23 THE COURT: Super. All right, so, Mr. Robert,
24 you'll look into that for us then?

25 MR. ROBERT: Yes, Your Honor.

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THE COURT: Okay.

MR. ROBERT: Yes, Your Honor.

THE COURT: Moving onto the transcripts of, in the other cases. And so on this one, Mr. Quinn or someone else on your team, if you could explain to me more which cases we're talking about. There may be a lot of types of litigations involving these entities, and so I can envision some that have nothing to do with the issues that are in this case, so how do we focus on ones that are relevant, that is ones that involve another scheme of the same modus operandi or, you know, some other specifics to narrow this down?

MR. QUINN: Sure. So I think the limitations that we've proposed thus far and included in the requests and in the discussions with the defendants were, number one, that we'd seek transcripts only from folks who are going to be deposed in this case, as well, so not other transcripts.

THE COURT: Okay.

MR. QUINN: And, second, that it would be limited to transcripts from actions or investigations that involved allegations of fraud by any of the same universe of entities that we had this defined term for, which include some governance entities, some specific LLCs, many of which are

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2 named in the complaint.

3 You know, I think if we wanted to be even more
4 targeted than that, I think that the tightest limiter I can
5 come up with is that, it would be cases or investigations
6 relating to business fraud that had something to do with the
7 endorsement or promotion of a consumer facing company, or
8 good or service. And here I'm thinking just as an example,
9 you know, from public records we know that in connection
10 with Trump University, for example, which is another entity
11 that, you know, the brand was sort of lent to in an even
12 more prominent way, I mean in the sense that the university
13 was named after Trump.

14 THE COURT: Right.

15 MR. QUINN: There was litigation, I'm aware of
16 two federal cases that alleged forms of business fraud
17 in connection with the endorsement and promotion of
18 Trump U and the docket in at least one of them
19 indicates that at least Mr. Trump was deposed I think
20 actually on two different days, in December, 2015, and
21 January, 2016. So that's about as narrow a set as I
22 could think of but if there are cases and
23 investigations involving business fraud allegations
24 that involve endorsement or promotion to consumers,
25 and anybody who is going to be deposed here was

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deposed in those cases, I think that's the smallest universe of transcripts I can come up with.

THE COURT: Okay, thank you. Mr. Robert, will you address this?

MR. ROBERT: Yes, Your Honor.

THE COURT: Okay.

MR. ROBERT: Yes, please. I still think this is an incredibly broad and intrusive request. Again, it's a limited case of what's out there. The remaining state claims, the use of what they could do with these transcripts would be far outside what they need to prove any of the elements in this case and it would be trying to be used for a prohibited use of other alleged misconduct that took place. At a minimum it would, you know, their definition of fraud as they're even saying is still incredibly broad. I mean here the allegations, when you boil it down to its simplest form, is it's alleged that the defendants allegedly touted an independent company despite knowing it to be worthless, that's their claim. So am I now to understand that they only want a transcript if it exists if the defendants are being sued and that's the claim? Because what they're talking about, other things, you know, it's not a surprise and it's a matter of public record, my client is sued

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2 routinely, all of them are.

3 THE COURT: Right.

4 MR. ROBERT: Plaintiffs' counsel in this case is
5 actually suing them in a few cases.

6 THE COURT: Um-hmm.

7 MR. ROBERT: So to suggest that we would go
8 through everything, I just think it's intrusive and I don't
9 think it's appropriate on the limited claims that are left
10 in this case.

11 THE COURT: Right. Well, but I mean there are, Mr.
12 Robert, there are some consumer state, there's some state
13 law consumer fraud claims that are still in the case. So do
14 you know if there are other cases, I mean this is
15 essentially a multilevel marketing, sort of a pyramid type
16 scheme, are there other litigations that involve those type
17 of allegations because that testimony could be admissible on
18 the topic of modus operandi, they also could be admissions
19 by a party, there are a number of ways in which that
20 testimony would be admissible. But if we're narrowing it to
21 consumer type fraud cases, that's hopefully a much smaller
22 universe. And again, we're just talking about if it's
23 somebody who's being deposed in this case.

24 MR. ROBERT: So am I understanding that it would
25 be, if it's a multilevel marketing claim or fraud involving

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2 the defendants in this case for a period of, let's say, five
3 years, that's something certainly I can go back to the
4 client with.

5 THE COURT: And, again, a witness who is being
6 deposed in this case.

7 MR. ROBERT: Understood.

8 THE COURT: Yes.

9 MR. ROBERT: Understood, Your Honor.

10 MS. KAPLAN: Not just multilevel marketing
11 schemes, Your Honor, the Trump University case, Trump
12 University was not a multilevel marketing scheme, it
13 was a similarly allegedly fraudulent scheme to
14 promote, to get unsuspecting consumers to give their
15 money over to the Trumps in exchange for something
16 that was far less than what was promised.

17 THE COURT: Right.

18 MS. KAPLAN: That's the crux of our case here.
19 We're not, we're not going to even have to prove that
20 it's a multilevel marketing scheme.

21 THE COURT: Oh, no --

22 MS. KAPLAN: All we have to prove at trial is
23 that they paid for something and Mr. Trump lied about
24 what they were getting, that's the fraud.

25 THE COURT: Okay.

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2 MR. ROBERT: I would respectfully --

3 THE COURT: Go ahead.

4 MR. ROBERT: I would respectfully disagree
5 with what's being said. There are no allegations in
6 here that any way constitute a fraud on behalf of
7 President Trump or any of the defendants here. They're
8 just trying to make something out of nothing here. But if
9 Your Honor wants us to endeavor on this very limited
10 issue, again, to move things along I'm happy to speak
11 to the client about it.

12 THE COURT: Okay. I mean what we're focused
13 on, Ms. Kaplan is taking issue with my limiting it to
14 a multilevel marketing fraud but a consumer facing
15 fraudulent misrepresentation case I think is what
16 we're focused on. And, again, limited to the
17 deponents in this case. And so I think in terms of
18 the burden that should narrow it significantly and for
19 now let's just go back five years from now, so back to
20 2017, and we'll see what that gets us. So if you can
21 investigate that, Mr. Robert, as well.

22 MR. ROBERT: Yes, Your Honor.

23 MS. NIEHAUS: Your Honor, I'm sorry to
24 interrupt here, I just want to be clear on behalf of
25 ACN, ACN is not a party to this litigation.

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THE COURT: I understand.

MS. NIEHAUS: And ACN is a currently operating legitimate direct sales company. So I just, I don't know if we're on the record or not --

THE COURT: We are.

MS. NIEHAUS: I want to protect the record in terms of my client is not an MLM fraudulent scheme, they operate legally, they operate pursuant to regulations, so I just don't want there to be a statement on the record that ACN is a multilevel marketing pyramid scheme.

THE COURT: This is a discovery conference, I'm not making any findings of fact or conclusions of law, I'm just simply describing what the plaintiffs' allegations are and trying to hone in on exactly what it is they're alleging. And so my characterization should not be taken out of context, I'll just say that.

MS. NIEHAUS: Thank you, Your Honor.

MS. KAPLAN: Your Honor, one point --

THE COURT: Yes.

MS. KAPLAN: According to our records, Mr. Trump's deposition was taken in the Trump University case on December 10, 2015, and January 21, 2016.

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THE COURT: Okay.

MS. KAPLAN: So we can go back to the beginning of 2015.

THE COURT: Okay. So at a minimum, Mr. Robert, we're honing in on the depositions that took place in the Trump University litigation, those may have gone back farther than five years but let's include that in the scope of what you're asking about, okay?

MR. ROBERT: Yes, Your Honor.

THE COURT: Okay. Can you just give me one second, I have a four o'clock conference that I need to just -- thank you.

All right, so now let's move on to ACN, I think it makes sense to finish up the document issues. So Mr. Quinn or Ms. Kaplan, where are we on I guess the non-email documents?

MR. QUINN: So I think we've got some good news and some updates here and a proposal for a way forward that I think ought to hopefully cut through some of it.

THE COURT: Great.

MR. QUINN: So on the non-email documents, I think we effectively resolved the questions about what

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I might call the composition of ACN's IBO base, you know, the people participating.

THE COURT: Okay.

MR. QUINN: We've gotten incremental numbers about how that population changed over time with sign ups and renewals and dropouts, and we had an issue about some baseline issues to give overall scale, we've been able to resolve that.

THE COURT: Okay.

MR. QUINN: Some of the arithmetic doesn't totally work so we may have a couple of follow-up questions or deal with it at deposition, but I think high level we've dealt with that issue.

THE COURT: Okay.

MR. QUINN: The second issue for the non-email documents relates to essentially the truth or falsity of promotional statements that were made that indicated to people there's essentially no risk to this and you can make real profit. We allege those representations were false and so we're trying to get sufficient information that would show essentially the performance of an average IBO, what could somebody actually expect when they got involved.

And, you know, here we kind of hit some

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2 logjams mostly because the representations coming back
3 from ACN are we just don't track that information in
4 that way. There was a long series of correspondence
5 that followed like sort of Charlie and Lucy with the
6 football where we just kept trying to propose
7 different ways of getting at it and ACN telling us
8 that's not how the records work either.

9 You know, I will say, and we put this in our
10 letter, it's somewhat difficult to accept some of
11 their representations. We do have filings from a civil
12 case showing a detailed portal in which IBOs can
13 access all of their information at a very granular
14 level, in Canada ACN makes disclosures about the
15 average income and performance of specific IBOs. When
16 the Montana Securities Commission came asking, ACN was
17 able to provide that information and then findings
18 were made by the Montana Securities Commission about
19 individual performance. I will concede that was also a
20 number of years ago, but it sort of indicates that the
21 information is there when ACN needs it.

22 So we've had some difficulty there. What ACN
23 has given us most recently is sort of aggregate
24 company level information, you know, here's what's
25 being paid out to the IBOs writ large and here's how

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some of the revenues and some of the other things
work. We'll have a lot of questions about that, you
know, these aren't GAP financial statements --

THE COURT: Okay.

MR. QUINN: They're PDFs that were produced to
us. And as we do the division and try to understand
it, you know, I think there's a lot there but our
suggestion at this point would be, you know, I think
we've kind of exhausted the issue and probably
exhausted Ms. Niehaus' patience with our meet and
confers. So, you know, I think we're in agreement
that a 30(b)(6) is going to make sense, we got some
correspondence and objections last night to the
30(B)(6) notice, on this topic I expect we can work
them out.

THE COURT: Okay.

MR. QUINN: So essentially our proposal would
be maybe we put a pin in that issue, we can ask them
questions about the records at a 30(b)(6) and if there
is more follow-up to do we'll try to do it in a
targeted way then and otherwise we may just need to
live with what we have.

THE COURT: Super, okay, that's great to hear.
Are you in agreement on that issue, Ms. Niehaus?

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MS. NIEHAUS: Yes.

THE COURT: Okay.

MS. NIEHAUS: I think we can work through that. There's a topic in the 30(b)(6) that I expect we'll be meeting and conferring on next week.

THE COURT: Okay, great. All right, so then the emails and the ESI, it looks like we're down to just a handful of search terms.

MR. QUINN: Yeah, we've made here, too, a lot of concessions to try to get to agreement. The universe has come down a lot, you know, I struggle to make some of the concessions because, of course, who knows what we're leaving on the table and there's been pretty limited email coming back from the defendants. But in all events we've made some concessions and I think broadly speaking here, too, we have found some agreement. There's a set of 22,305 responsive documents including families that covers all the search terms we've proposed and I think the only question at this point really is whether the plaintiff should be required to pay attorney review time to conduct a privilege review of those documents to just give some context to that.

The estimate for that review, for that attorney review, is \$20,000. We've already paid all of the vendor costs which have been very significant

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2 here, not faulting anyone for that, we did run some
3 broad terms at first so there was a lot of processing
4 and other costs. But we've paid by my math \$85,000 in
5 those costs, so on that basis we're not prepared to
6 pay additional privilege review and we've also made
7 clear we'll agree to enhanced claw back procedures if
8 that's helpful, but \$85,000 in costs which, you know,
9 we're continuing to cover going forward in our view is
10 more than sufficient and if ACN wants to conduct a
11 privilege review, it's their prerogative. But we're
12 not sure that that cost should be borne by plaintiffs,
13 especially since, you know, ACN does seem to have
14 plenty of money to pay lawyers to challenge these
15 discovery obligations which they took all the way to
16 the Supreme Court, or to sue our individual plaintiffs
17 in arbitrations and seek injunctions, there's money
18 there for attorneys expect apparently not to review
19 the documents for privilege. So I think that's the
20 only --

21 THE COURT: I mean they're not a party in this
22 case, so it's not an uncommon request, I can say that.
23 Okay.

24 MS. NIEHAUS: Your Honor, I think Mr. Quinn
25 largely explained where we're at accurately. I did

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2 give them an update on April 29th by email that we had
3 continued to work with the e-discovery vendor and have
4 reduced the document set using the revised search terms
5 and a deduping against a prior production set and then with
6 email threading to 14,425 documents, inclusive of
7 families.

8 THE COURT: Okay.

9 MS. NIEHAUS: Our position does remain that
10 plaintiffs should be required to pay the review cost
11 of that, and what we mean by review cost is through
12 the e-discovery vendor we would engage a team of
13 contract lawyers to conduct a privilege and
14 confidentiality review. It wouldn't be me sitting
15 there at a computer, thank goodness, looking at 14,000
16 documents, right?

17 THE COURT: Right.

18 MS. NIEHAUS: What that doesn't include though
19 is my time to train up a contract review team to
20 liaise with the, to liaise with the vendor, probably
21 to spot check, make some additional productions. The
22 estimate from the vendor is \$14,000 just for the
23 contract attorneys to review.

24 We acknowledge that plaintiffs have suggested
25 some claw back provisions but, frankly, Your Honor,

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2 that's not sufficient because they've also insisted
3 that we include former in-house counsel's files in the
4 document set. We cannot possibly come up with, you
5 know, privilege terms because we're going back to 2008
6 here, I have no idea which, I'm sorry, law firm she
7 was working with, she is no longer even with the
8 company.

9 THE COURT: Okay.

10 MS. NIEHAUS: And, frankly, you know, with due
11 respect to counsel, they did challenge 16 documents
12 that we had redacted from one of our agent's
13 productions. So I'm not confident that a claw back
14 provision here would be suitable or sufficient to
15 protect ACN's interests. ACN is an outside party,
16 they have exhausted a tremendous amount of resources
17 already in complying with discovery obligations. This
18 case, and, frankly, enforcing their rights which
19 they're entitled to a privilege review, they're
20 entitled to rely on good faith arguments about the
21 rights and obligations of ACN and its IBOs.

22 So I don't think it's unreasonable to request
23 that plaintiffs cover the cost of the review, we're
24 ready and willing to go forward with that as soon as
25 we have the commitment from them to pay for that.

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2 Again, I'm not asking them to pay for my time.

3 THE COURT: Sure, I understand. So the in-
4 house counsel, remind me of her name?

5 MS. NIEHAUS: Pauline Jones.

6 THE COURT: Jones, okay. So what if we just,
7 since, if the plaintiffs are insisting that her
8 documents be included, what if we just had them pay
9 for the costs of reviewing, the privilege review of
10 her section of the \$14,000?

11 MS. NIEHAUS: Right, Your Honor, I'm not sure
12 that that covers it because, you know, the documents
13 that were challenged, for example, there was a
14 production made by another nonparty entity operated as
15 an agent of ACN in coordinating the appearances of
16 Donald Trump, for example, that was the marketing
17 consultants, we've referred to that production, Anne
18 Archer Butcher and Dolphin. And, you know, the
19 privilege claim there was that Anne Archer Butcher was
20 acting as an agent and she was copied on emails
21 involving some legal advice. So there are other
22 documents that we're aware of that could potentially
23 be in this set that wouldn't necessarily be a Colleen
24 Jones custodial document but that might contain
25 privileged information.

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2 I also don't know if after Ms. Jones'
3 departure her successor was, you know, coordinating
4 with other outside counsel. I don't have a list of
5 counsel that ACN employed over time to be able to say
6 these 12 search terms should be run so we can isolate the
7 vast majority of privilege documents. We just, we have
8 no good way to approach that so the best way I can
9 come up with to protect ACN and, frankly, its
10 confidentiality interest, as well, not just privilege,
11 is to conduct a review. I mean we have reduced the set
12 now, I think the original count was 120,000, so we
13 have worked with plaintiffs to reduce that set
14 significantly but the cost to a nonparty of \$14,000 is
15 not reasonable. And, frankly, Judge Schofield's
16 individual rules wouldn't even allow it for a party.

17 MR. QUINN: Your Honor, if I may?

18 THE COURT: What?

19 MR. QUINN: Just two clarifications and then a
20 proposal. By way of clarification, we did challenge
21 certain entries in a privilege log, of course, there's
22 been no suggestion that in doing so we, you know,
23 mishandled any privileged information or did anything
24 other than comply with the applicable rules including
25 with respect to sealing and otherwise.

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2 As to the inclusion of ACN's in-house counsel,
3 our request was simply that the external documents be
4 included, internal communications only could be
5 excluded, we recognized they were likely to be
6 privileged but she was often, it appears, kind of an
7 external facing person negotiating key agreements, et
8 cetera and so we requested that that set be included.

9 All that said, it's very good news obviously
10 from our perspective that the cost is now down to 14,
11 when we thought we were at 20 I think at the end of
12 the day we thought if we ended up splitting that, that
13 would be a perfectly sensible outcome. And so we're
14 still prepared to do that if it makes sense for us to
15 cover 10 I think we could live with that and it would
16 only leave \$4,000 in remaining costs.

17 THE COURT: Could we do 10 and 4?

18 MS. NIEHAUS: Your Honor, not to quibble over
19 math because I know it's none of our strong suits, but
20 I think that's still not taking into account the fact
21 that there are additional costs and there have been
22 costs incurred to date. And we, you know, detailed in
23 our letter, the internal costs, which we can't even
24 put a value on, of our, we have one chief information
25 officer, he had to handle all of this which takes him

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2 away from his day to day business. We have the clients
3 that have to interface with me to try to sort through
4 all these details, and then we have my time on top of
5 that.

6 So I think asking them to bear the full
7 \$14,000 is still not unreasonable given all the other
8 costs that ACN is absorbing in complying with their
9 discovery obligations here.

10 THE COURT: Is there anything we can do to
11 carve out anything else from the 14 to get that any
12 smaller?

13 MR. QUINN: I think if put to that choice,
14 Your Honor, we might rather swallow the 14 because
15 we've chopped this down about as much as we can.

16 THE COURT: All right.

17 MR. QUINN: I would reiterate we're covering
18 all the external costs, too, which are 85 and
19 counting, but --

20 THE COURT: Well do want to swallow the 14 or
21 do you want to find a way to cut it down further?

22 MR. QUINN: I think we'll swallow the 14, Your
23 Honor, thank you.

24 THE COURT: All right.

25 MS. KAPLAN: You drive a hard bargain.

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THE COURT: We have a deal. We have a deal, so all right. So let's, the last issue on ACN is depositions but I think it makes sense to talk about all the depositions together. So let me start with whether there's been any change, I think the letter on this came in at the beginning of April, so has anything changed since the letters in terms of the parties' ability to make progress on these issues?

MR. QUINN: Not in terms of any ability to make progress.

THE COURT: Okay.

MR. QUINN: We're still seeking 25 and the defendants have not agreed to anything above 10.

THE COURT: Okay.

MR. QUINN: There may be some, you know, if we want to really get into the details of exactly who we'd want to depose, some of the specific numbers per categories we've given, I could probably be a little more specific as to where our current thinking is.

THE COURT: Okay.

MR. QUINN: But aside from those kinds of very small changes nothing else in the status.

THE COURT: Okay, are we still agreed that the five defendants are being, that there's four individual and

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one 30(b)(6) for the defendants?

MR. QUINN: Yes, unless the defendants say otherwise, but my understanding is we are still in agreement.

THE COURT: And do we have dates for those?

MR. QUINN: We did, some of which were --

THE COURT: Mr. Shapiro is shaking his head -- sorry.

MR. QUINN: We did, we've taken those off the calendar in part because the sequencing here on both sides I think will be a factor and then just the overall limit will affect schedule.

THE COURT: Okay, so those five are, I think we're good and we're agreed. All right, so then let's talk about the Trump Corporation employees, am I right that the parties were in agreement about Ms. Graff (phonetic) and Lynn Patton, that they would both be deposed?

MR. QUINN: Yeah, I think --

MR. ROBERT: This is -- I'm sorry.

THE COURT: Go ahead, Mr. Robert.

MR. ROBERT: Yes, we agree to produce them. Yes, Your Honor.

THE COURT: All right, and you're making me do

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2 math again so we're in very perilous territory.

3 MR. QUINN: Yeah, if held to ten we might
4 reserve the right to try to choose one of those two if
5 we had to come up with ten total.

6 THE COURT: Okay.

7 MR. QUINN: But in pretty much any other
8 scenario then, yes, we want to depose those two and
9 the defendants have agreed.

10 THE COURT: Go ahead, Mr. Robert.

11 MR. ROBERT: And, Your Honor, they had also
12 asked for an Amanda Miller who we had agreed to
13 produce and back in 2020 the plaintiffs had deposed
14 two former ACN employees. So if you take the five
15 defendants, the two former that they already have is seven,
16 Ms. Graff, Ms. Patton and Ms. Miller would bring us to ten.

17 THE COURT: Okay. So Ms. Miller has been deposed
18 or you've agreed that she can be deposed?

19 MR. ROBERT: We've agreed to produce her, they had
20 asked that they wanted her. Then I think the plaintiffs had
21 said, well, we're not sure based on where the limitation
22 will be.

23 THE COURT: Okay, yep, that's ten.

24 MR. QUINN: Exactly.

25 THE COURT: All right. So who else, your letter

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says six to eight, so who beyond, and Ms. Miller is also a Trump Corporation employee?

MR. QUINN: Yes.

MR. ROBERT: She's worked in marketing, whether she's an actual employee now I can't speak to but she would be someone who we'd produce. And I also would note that they served a 30(b)(6) on ACN so technically they are already at 11 and I believe they served subpoenas on the individual officers of ACN, I think they served 4 of them. So I think we need to address that in part as well.

THE COURT: Okay.

MR. QUINN: This is precisely what I'm clarifying, Your Honor, in the event that we were held to ten depositions, I think it's unlikely we would use three of them on Rona Graff, Lynn Patton and Amanda Miller, we'd have to make some hard choices there.

THE COURT: Okay.

MS. KAPLAN: Your Honor, let me just say, I never thought I'd get old enough to pull the age card but I've gotten there, Your Honor, and I've been litigating in this courthouse now for some 25 years, I've never seen a complex commercial case involving fraud in the Southern District of New York where the parties were held to 10 depositions. That's not --

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2 THE COURT: Just to take some of the air out
3 of the room, I'm not inclined to limit you to 10 but
4 I'm trying to get to what people can live with. So
5 just to not bury the weed, but I am trying to keep it
6 as low as possible so that we're not duplicating
7 because I am mindful that, you know, for ACN, for
8 example, that they are a nonparty, for the "Celebrity
9 Apprentice" contestants, they're nonparties and
10 they're celebrities and who knows what their
11 availability is.

12 MS. KAPLAN: I have a feeling they might enjoy
13 getting deposed in this case, Your Honor, but we'll
14 see.

15 THE COURT: I have yet to meet anybody who
16 enjoyed being deposed.

17 MS. KAPLAN: Celebrities may be the only
18 category --

19 THE COURT: I don't know. I don't know. So,
20 all right, let's talk about Ms. Butcher, do we know if
21 she's amenable to being deposed?

22 MR. QUINN: We don't know the answer to that,
23 Your Honor.

24 THE COURT: Okay.

25 MR. QUINN: It's been something we've put in

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2 all those letters, we haven't heard opposition.

3 THE COURT: Okay.

4 MR. QUINN: I don't think it would surprise
5 anyone.

6 THE COURT: Mr. Robert, are you able to speak
7 to Ms. Butcher?

8 MR. ROBERT: I believe someone from ACN would
9 be in a better position to speak to her than I would.

10 THE COURT: Is that you, Ms. Niehaus?

11 MS. NIEHAUS: She's actually represented by
12 separate counsel, Deana Davidian.

13 THE COURT: Okay.

14 MS. NIEHAUS: And I don't know their position
15 on depositions.

16 THE COURT: Has she been subpoenaed?

17 MR. QUINN: She had, I mean partly, Your Honor
18 --

19 THE COURT: Because you thought, because of
20 the dispute.

21 MR. QUINN: Exactly, with the limit in place
22 we hadn't wanted to start serving more than 10
23 depositions.

24 THE COURT: Okay. All right, and she would
25 talk about the communications that Ms. Niehaus was

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2 referencing earlier, right, the, where she was sort of
3 acting as the agent of the Trump Corporation, I think,
4 right?

5 MS. NIEHAUS: She actually, she was a
6 contractor, and the contract was with ACN, she was paid by
7 ACN, she was employed by ACN to liaise with former
8 President Trump for conventions and articles that he, his
9 byline was put on in various magazines.

10 THE COURT: Over what period of time, do we know
11 roughly, like a long time or --

12 MS. NIEHAUS: It was a significant period of
13 time.

14 THE COURT: The other thing I'm trying to do is
15 not all these people necessarily need seven hours, too,
16 so, for example, the celebrities, I'm guessing those are
17 two hours maybe if that long, and so, you know, if we're
18 looking at a deposition that's seven hours maybe we have
19 --

20 MS. KAPLAN: Your Honor, if we have some sense
21 of the volume, you know, we can work it out. For
22 example, I'll give you an example, Hope Hicks is on
23 our list because there's an extremely relevant email
24 that she wrote.

25 THE COURT: Okay.

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MS. KAPLAN: I can't imagine her deposition would take more than an hour or two max. But, again, it's hard without --

THE COURT: Understand. Understand.

MS. KAPLAN: You understand the problem, I'm kind of bargaining against myself.

THE COURT: Yes.

MS. KAPLAN: Which I'd prefer not to do.

THE COURT: I understand. All right, well, Mr. Robert, if I'm inclined to give the plaintiffs more than 10 but less than 25, but then also to limit, especially some of the nonparty depositions to significantly less than 7 hours, do you think you'd be able to negotiate with plaintiffs' counsel to try to reach an agreement on the exact number?

MR. ROBERT: If they are realistic in terms of who they want and how much time they want with them, I'm always willing to have a conversation. But, you know, if you're going to give me 19 names that's not going to go anywhere, but if they limit it to 12 or 13 or something we talk about how much time they need, I'm certainly willing to have that conversation.

MS. KAPLAN: What I do, Your Honor, I've done this in other cases, is we have an hour limit, because

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to address particularly your concern.

THE COURT: Yes.

MS. KAPLAN: So if you took, for example, this kind of math I can do, if you took 20 depositions times 7 hours which is the standard, 140, somewhere in the range of 120 to 140 hours that we could allocate, we will stick with those parameters.

THE COURT: Yes, I did that in another complicated, actually Judge Pitman did it and I inherited it, but, yes, so then we're counting not by depositions but by hours. But at the same token, we're not using that to get back up to 25. I mean I'm still thinking that somewhere between 10 and 15 is a reasonable number, but I can see, you know, a couple of people who might be an hour and so that might have the number creep, you know, back up a little bit.

So with those sort of vague parameters to encourage the parties to meet and confer, what I can also tell you just as to ACN, I am inclined to deny without prejudice the request to take the founders' depositions, just take the 30(b)(6). And then if there's some burning issue that comes up in the 30(b)(6) that was not answered, then if you could meet and confer with their counsel in the first instance

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and if you can't agree then come to me. But it seems to me the fairest thing is to not be trudging all four of them in there and trying to cover as much as we can in the 30(b)(6) deposition as, can you agree with that, Ms. Niehaus?

MS. NIEHAUS: Yes, thanks, Your Honor.

THE COURT: Okay. Can you live with that?

MR. QUINN: I'll flag that one of the four founders has a number of discreet areas in which there was more individual conduct, including individual donations, some solicitation of the defendants to also promote another business that he was associated with, some property purchases that seemed to have been tied to a development. So there's a number of areas that are unique to that person and I don't know that a corporate representative can speak to, so I'll just flag that that is likely going to be an issue but, of course, happy to proceed with the 30(b)(6) first.

THE COURT: I hear you, I also, at some point depositions get to be a diminishing utility, too, and if you know the events that he was involved in and you know the donations and you know the properties, think about whether you really need to, what you need to ask him about and whether you are likely to get that much more information.

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All right, so if we set a range of, I think 140 is too high, but let's aim for 100 hours total --

MS. KAPLAN: But that's less than 15 depositions, Your Honor, can we aim for 105 which is 15?

THE COURT: Okay, 105.

MS. KAPLAN: I had to use my calculator.

THE COURT: I was not going to be able to do that on my own.

MR. QUINN: And if I may, Your Honor, there was mention of this, there were two depositions several years ago, ACN former employees who public record suggested they had some knowledge and while we were able to we went and took those depositions.

THE COURT: Okay.

MR. QUINN: So I don't know if we're including those, I'd suggest we try to put those to the side and deal with what's in front of us but I just want to --

THE COURT: I would include them for now because we're talking about 105 hours on the plaintiffs' side for the whole case. But, you know, what I can tell you, if we get to 106 or 107, I'll be reasonable, but if we get to 115, 120, I think that's farther outside the range of where I want you all to end up.

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MR. QUINN: Understood.

THE COURT: Okay. And on the defendants' side, have you taken the plaintiffs' depositions yet, Mr. Robert?

MR. ROBERT: Mr. Shapiro has taken two of the plaintiffs so far so I can let him address that.

THE COURT: So we have two to go.

MR. SHAPIRO: Two to be scheduled.

THE COURT: Okay. So we'll set a rough goal of 105 hours on the plaintiffs' side and what I would encourage you to do is meet and confer on that sooner rather than later and if there are any that you can't agree on, that you can raise that with me and we can jump on the phone together. Okay, and then deny without prejudice the request to take the individual ACN depositions subject to the 30(b)(6) and I'll deny that without prejudice and if you want to renew it, fine.

MS. KAPLAN: One more issue, Your Honor, I'm already thinking ahead to trial, given these limitations, we're not going to waste time at deposition authenticating documents or doing things like that.

THE COURT: Okay.

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2 MS. KAPLAN: We assume that Your Honor will
3 want the parties to work that out in a cooperative
4 fashion through interrogatories or other things like
5 that.

6 THE COURT: Right, stipulations, all that kind
7 of thing, yes. Subject to, you know, this case will
8 be tried in front of Judge Schofield so I'm not
9 undermining anything she may want you to do, but in
10 general judges like it the more the parties can agree
11 on alone.

12 All right, so should we have another check-in
13 in a couple of weeks to just make sure that we've, you
14 know, Mr. Robert, I would encourage you to talk to
15 your client about the document issues and get back to
16 the plaintiffs --

17 MR. ROBERT: Yes, absolutely.

18 THE COURT: But then I guess I would like to
19 know where everybody is so that we're moving all this
20 forward. Let me just remind myself of your schedule.

21 MR. QUINN: Yeah, I was going to turn to that,
22 Your Honor.

23 THE COURT: Yes.

24 MR. QUINN: So the current case management
25 plan sets a deadline for close of fact discovery of

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2 June 29th, the parties have been in touch and have both
3 been saying to one another now for several, I mean we
4 raised some of these document issues back in March.

5 THE COURT: Yes.

6 MR. QUINN: So just the process of further
7 meet and confers took time, so both sides I think have
8 acknowledged there's going to be a need to come to the
9 Court and that we hoped we could work something out on
10 that. We've made a revised scheduling proposal, the
11 defendants indicated that they wanted to kind of see
12 how today went so that's also something we can meet
13 and confer about or address today, whatever Your Honor
14 wants.

15 THE COURT: If we're going to talk in a couple
16 of weeks I'd prefer not to just jump to extending it
17 too much longer because, you know, we extend it too
18 much past July and then we lose people, so it's kind
19 of a wasted effort. So I'd prefer to keep your feet to
20 the fire a little bit and see how much we can get done
21 before we lose people in August.

22 MR. QUINN: Sure.

23 THE COURT: So hold on one second, let me just
24 pull up the calendar to see, and thank you all for
25 coming here today, by the way, I think next time we

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2 can probably talk by phone. How is 12:00 on June 8th
3 by phone?

4 MR. QUINN: I think that looks okay for us,
5 Your Honor.

6 MR. ROBERT: Fine for me, Your Honor.

7 THE COURT: Mr. Robert, how is that for you?

8 MR. ROBERT: That's fine, Your Honor, thank
9 you.

10 THE COURT: Okay, any objections, anybody in
11 the room? Okay.

12 MS. NIEHAUS: Your Honor, will you require
13 ACN's attendance at that conference?

14 THE COURT: Hopefully not, I think -- I think
15 what we'll do is we'll put you down for the conference
16 on the 8th and by the Friday before I'll have you just
17 do a joint status letter and hopefully we've resolved
18 all that and we don't need you, Ms. Niehaus.

19 MR. QUINN: Yeah, I would just add, Your
20 Honor, I think given the need to now complete this
21 email review and get those documents produced,
22 unlikely we'll have the ACN 30(b)(6) by then so I
23 think it's unlikely that these other disputes will be
24 teed up in turn.

25 THE COURT: Well, again, if -- let's see where

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2 we are then and if you're in the position then to be,
3 you know, renewing, if you haven't taken the 30(b)(6)
4 then it's sort of a moot point and we may just have to
5 address it down the road once you're further along.
6 Okay, so the Friday before is June 3rd, so by the end
7 of the day on June 3rd if the parties could put in a
8 short letter just listing kind of the open issues I
9 think I'm up to speed on them now so I don't need a
10 lengthy letter but I'll give you five pages to give me
11 a status update.

12 Anything else then we should cover today from
13 the plaintiffs' perspective?

14 MR. QUINN: Nothing further from the
15 plaintiffs, thank you, Your Honor.

16 THE COURT: Okay, Mr. Robert?

17 MR. ROBERT: Nothing, Your Honor, thank you.

18 THE COURT: Okay, anybody else in the room
19 want to raise anything? Okay, very good, thank you
20 all, this was very helpful, we're adjourned.

21 (Whereupon the matter was adjourned.)
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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, McKoy, et al. versus The Trump Corporation, et al., Docket No. 18cv9936, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature

Carole Ludwig

CAROLE LUDWIG

Date: May 24, 2022